

**Please Direct All Correspondence to Customer Number 20995**

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**PETITION FOR REVIVAL OF AN  
UNAVOIDABLY ABANDONED APPLICATION**

Applicant	:	Gordon, John Francis
App. No	:	09/284,421
Filed	:	June 11, 1999
Title	:	APPARATUS AND METHOD FOR CONDUCTING ASSAYS
Examiner	:	Wallenhorst, Maureen
Art Unit	:	1741

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

The above-identified application became abandoned for failure to timely respond to the Notice to File Corrected Application Papers mailed on October 16, 2007, having a shortened statutory period for response of December 16, 2007. The statutory period for response in this application is December 16, 2007.

Applicant hereby requests that the U.S. Patent and Trademark Office (PTO) revive the above-identified application which was unavoidably abandoned. A reply to the outstanding Notice to File Corrected Application Papers dated October 16, 2007 (the "Notice") is submitted herewith. Applicant respectfully submits that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable, as described below in greater detail.

Applicant prepared and filed the Issue Fee Payment on December 13, 2007 in response to the Notice of Allowance dated September 14, 2007. In a routine status check on PAIR conducted on January 10, 2008 by Dawn-Marie Nuckles, a legal assistant in the offices of counsel for applicant, applicant learned that the application was considered abandoned for failure to respond to the Notice referenced above. The Notice, however, was not listed, nor was it available for viewing in the image file wrapper. A copy of the view of the image file wrapper listing accessed by the applicant is attached hereto as Exhibit 1.

In a phone conversation with Dale Olson in the Office of Data Management on January 11, 2008, Dawn Nuckles was advised that a discrepancy in the drawings of the above-identified application was found during the printing process. This discrepancy was identified in the Notice. Due to participation of counsel for applicant in the Electronic Notification process, a hard copy of this Notice was not sent by the PTO to applicant's counsel. Mr. Olson advised counsel for

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applicant that a technical problem occurred during the transaction from which this Notice was generated and for that reason, the Notice was not electronically transmitted to counsel for applicant nor was it shown on PAIR. Accordingly, it was not possible using the expected communication and monitoring procedures for applicant or their counsel to become aware of the Notice. This petition was promptly prepared, along with corrected drawings prepared in response to the Notice, after learning of this problem. A Declaration of Dawn Nuckles in support of these facts is submitted herewith as Exhibit 2. In view of this, applicant submits that the failure to respond to the Notice was unavoidable.

Submitted herewith is a revised set of drawings, filed in response to the Notice, which was recently provided to counsel for applicant by the PTO, submitted herewith as Exhibit 3.

In view of the above, applicant respectfully requests the revival of the above-identified application, and acceptance of the papers submitted herewith in response to the Notice to File Corrected Application Papers.

As this error was not the fault of the applicant, presumably there is no fee due.

The Commissioner is hereby authorized to charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Jan. 29, 2008

By: Drew S. Hamilton  
Drew S. Hamilton  
Registration No. 29,801  
Attorney of Record  
Customer No. 20,995  
(619) 235-8550

**EXHIBIT 1**

09/284,421 APPARATUS AND METHOD FOR CONDUCTING ASSAYS

01-10-  
2008::17:30:40

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.**

**Available Documents**

Mail Room Date	Document Code	Document Description	Document Category	Page Count
01-03-2008	BIB	<b>Bibliographic Data Sheet</b>	PROSECUTION	1
12-13-2007	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
12-13-2007	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
12-13-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	2
12-13-2007	N417	Status Letter Mailed to Applicant	PROSECUTION	2
10-30-2007	892	List of references cited by examiner	PRIOR ART	1
09-14-2007	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
09-14-2007	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	4
09-14-2007	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	1
09-14-2007	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
09-14-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
09-14-2007	BIB	Bibliographic Data Sheet	PROSECUTION	1
09-14-2007	FWCLM	Index of Claims	PROSECUTION	5
08-29-2007	SRNT	Examiner's search strategy and results	PROSECUTION	4
08-27-2007	A...	Amendment - After Non-Final Rejection	PROSECUTION	1
08-27-2007	CLM	Claims	PROSECUTION	6
08-27-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	6
08-27-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	2
08-27-2007	N417	Status Letter Mailed to Applicant	PROSECUTION	2
08-27-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
02-27-2007	CTNF	Non-Final Rejection	PROSECUTION	13
02-27-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
02-27-2007	FWCLM	Index of Claims	PROSECUTION	1
02-27-2007	BIB	Bibliographic Data Sheet	PROSECUTION	1
02-13-2007	SRNT	Examiner's search strategy and results	PROSECUTION	6
02-02-2007	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
02-02-2007	CLM	Claims	PROSECUTION	5
02-02-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
02-02-2007	RCEX	Request for Continued Examination (RCE)	PROSECUTION	2
02-02-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
06-30-2006	N/AP	Notice of Appeal Filed	PROSECUTION	2
01-06-2006	CTFR	Final Rejection	PROSECUTION	9
01-06-2006	892	List of references cited by examiner	PRIOR ART	1
01-06-2006	FWCLM	Index of Claims	PROSECUTION	1

01-06-2006	BIB	Bibliographic Data Sheet	PROSECUTION	1
01-06-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
01-04-2006	SRNT	Examiner's search strategy and results	PROSECUTION	3
12-08-2005	EBCC.AD	Notice of Change of Address placed in File Wrapper due to EBC Customer Number update	PROSECUTION	1
10-17-2005	A...	Amendment - After Non-Final Rejection	PROSECUTION	2
10-17-2005	ABST	Abstract	PROSECUTION	1
10-17-2005	CLM	Claims	PROSECUTION	5
10-17-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
10-17-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
10-17-2005	FWCLM	Index of Claims	PROSECUTION	1
09-15-2005	NTC.A.NONCPL	Notice to the applicant regarding a Non-Compliant Amendment	PROSECUTION	2
09-15-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
09-15-2005	FWCLM	Index of Claims	PROSECUTION	2
09-02-2005	A.I.	Informal or Non-Responsive Amendment	PROSECUTION	2
09-02-2005	ABST	Abstract	PROSECUTION	1
09-02-2005	CLM.NE	Claim-Amendment Not Entered	PROSECUTION	7
09-02-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
07-05-2005	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	4
06-03-2005	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	2
06-03-2005	CTNF	Non-Final Rejection	PROSECUTION	8
06-03-2005	892	List of references cited by examiner	PRIOR ART	1
11-30-2004	CTNF	Non-Final Rejection	PROSECUTION	8
11-30-2004	892	List of references cited by examiner	PRIOR ART	1
11-30-2004	FOR	Foreign Reference	PRIOR ART	41
11-30-2004	BIB	Bibliographic Data Sheet	PROSECUTION	1
11-30-2004	FWCLM	Index of Claims	PROSECUTION	1
11-30-2004	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
09-27-2004	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
08-23-2004	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
08-23-2004	CLM	Claims	PROSECUTION	5
08-23-2004	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	6
08-23-2004	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	16
08-23-2004	RCEX	Request for Continued Examination (RCE)	PROSECUTION	4
08-23-2004	PA..	Power of Attorney	PROSECUTION	2
08-23-2004	OATH	Oath or Declaration filed	PROSECUTION	8
08-23-2004	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	3
08-23-2004	FWCLM	Index of Claims	PROSECUTION	2
12-09-2003	ABN	Abandonment	PROSECUTION	2
05-20-2003	CTFR	Final Rejection	PROSECUTION	10
05-01-2003	CTMS	Miscellaneous Action with SSP	PROSECUTION	2
04-23-2003	TRTC	Transmittal to TC	PROSECUTION	1
04-23-2003	A...	Amendment - After Non-Final Rejection	PROSECUTION	1

04-23-2003	CLM	Claims	PROSECUTION	2
04-23-2003	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
04-23-2003	PA..	Power of Attorney	PROSECUTION	2
04-23-2003	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	1
04-23-2003	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	1
04-23-2003	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	20
04-23-2003	XT/	Extension of Time	PROSECUTION	2
04-15-2003	CTMS	Miscellaneous Action with SSP	PROSECUTION	2
10-23-2002	CTNF	Non-Final Rejection	PROSECUTION	10
08-06-2002	A...	Amendment - After Non-Final Rejection	PROSECUTION	1
08-06-2002	CLM	Claims	PROSECUTION	1
08-06-2002	SPEC	Specification	PROSECUTION	2
08-06-2002	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	11
08-06-2002	DRW	Drawings-only black and white line drawings	PROSECUTION	2
01-29-2002	CTNF	Non-Final Rejection	PROSECUTION	13
01-29-2002	892	List of references cited by examiner	PRIOR ART	1
01-29-2002	FOR	Foreign Reference	PRIOR ART	20
11-16-2001	ACPA	Continued Prosecution Application - Continuation (ACPA)	PROSECUTION	4
11-16-2001	CLM	Claims	PROSECUTION	6
11-16-2001	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
11-16-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	4
10-09-2001	CTAV	Advisory Action (PTOL-303)	PROSECUTION	3
09-25-2001	A...	Amendment - After Non-Final Rejection	PROSECUTION	1
09-25-2001	CLM	Claims	PROSECUTION	4
09-25-2001	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	10
09-25-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	1
09-25-2001	FOR	Foreign Reference	PRIOR ART	43
07-26-2001	CTFR	Final Rejection	PROSECUTION	9
05-14-2001	A...	Amendment - After Non-Final Rejection	PROSECUTION	1
05-14-2001	SPEC	Specification	PROSECUTION	1
05-14-2001	CLM	Claims	PROSECUTION	9
05-14-2001	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
05-14-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	2
01-09-2001	CTNF	Non-Final Rejection	PROSECUTION	9
01-09-2001	892	List of references cited by examiner	PRIOR ART	1
01-09-2001	NFDR	Notice of Formal Drawings Required	PROSECUTION	1
01-09-2001	1449	List of References cited by applicant and considered by examiner	PRIOR ART	2
01-03-2001	SRNT	Examiner's search strategy and results	PROSECUTION	13
06-30-2000	CTMS	Miscellaneous Action with SSP	PROSECUTION	1
06-22-2000	PA..	Power of Attorney	PROSECUTION	3
12-08-1999	CTMS	Miscellaneous Action with SSP	PROSECUTION	1
11-18-1999	PA..	Power of Attorney	PROSECUTION	3
08-23-1999	IDS	Information Disclosure Statement (IDS) Filed	PROSECUTION	2

08-23-1999	FOR	Foreign Reference	PRIOR ART	52
08-23-1999	FOR	Foreign Reference	PRIOR ART	33
08-23-1999	FOR	Foreign Reference	PRIOR ART	44
08-23-1999	FOR	Foreign Reference	PRIOR ART	163
08-23-1999	FOR	Foreign Reference	PRIOR ART	14
08-23-1999	FOR	Foreign Reference	PRIOR ART	4
07-01-1999	M903	Notice of DO/EO Acceptance Mailed	PROSECUTION	1
06-11-1999	LET.	Miscellaneous Incoming Letter	AS FILED	42
06-11-1999	BIB	Bibliographic Data Sheet	PROSECUTION	1
06-11-1999	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
06-11-1999	OATH	Oath or Declaration filed	PROSECUTION	6
05-13-1999	M905	Notice of DO/EO Missing Requirements Mailed	PROSECUTION	1
04-08-1999	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	22
04-08-1999	FOR	Foreign Reference	PRIOR ART	48
04-08-1999	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
04-08-1999	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
04-08-1999	FWCLM	Index of Claims	PROSECUTION	2
04-08-1999	TRNA	Transmittal of New Application	PROSECUTION	2
04-08-1999	136A	Authorization for Extension of Time all replies	PROSECUTION	2
04-08-1999	DRW	Drawings-only black and white line drawings	PROSECUTION	3
04-08-1999	SPEC	Specification	PROSECUTION	20
04-08-1999	CLM	Claims	PROSECUTION	7
04-08-1999	BIB	Bibliographic Data Sheet	PROSECUTION	1
04-08-1999	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
04-08-1999	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
04-08-1999	A.PE	Preliminary Amendment	PROSECUTION	1
04-08-1999	CLM	Claims	PROSECUTION	4
04-08-1999	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
04-08-1999	371P	Documents submitted with 371 Applications	PROSECUTION	43
04-08-1999	IMIS	Miscellaneous Internal Document	PROSECUTION	1

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**DECLARATION**

I, Dawn-Marie Nuckles hereby declare that:

I am a legal assistant in the San Diego offices of Knobbe, Martens, Olson & Bear, LLP. One of my duties is to conduct periodic status checks of matters pending in the United States Patent and Trademark Office. On January 10, 2008, I conducted such a routine status check by accessing PAIR with respect to U.S. Patent Application No.: 09/284,421. Upon reviewing the information in PAIR I discovered that the above-identified application was considered abandoned for failure to respond to a Notice to File Corrected Application Papers.

I then reviewed the image file wrapper and found that there was no information there about such a Notice. Following this, I contacted our docketing department and asked them to conduct a search in an effort to locate this Notice. They reported to me that they were unable to locate the Notice and there was no record of the receipt of such a Notice by Knobbe, Martens, Olson & Bear, LLP.

I contacted Dale Olson in the USPTO Office of Data Management on January 11, 2008. During our phone conversation, Mr. Olson advised me that a discrepancy in the drawings of US Patent Application No.: 09/284,421 was found and thus, the Notice was prepared. Mr. Olson also confirmed that a technical problem occurred during the transaction from which this Notice was generated and for that reason, the Notice was not electronically transmitted by the USPTO to counsel for Applicant, nor was the Notice shown or otherwise available to be reviewed on PAIR.

I hereby attest that Exhibit 1 submitted herewith is a true copy of the view of the image file wrapper listing on PAIR that I printed on January 10, 2008.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

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Dawn-Marie Nuckles

Signature Dawn-Marie Nuckles

Date January 28, 2008

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Send Correspondence To:  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
**Customer No. 20,995**

**EXHIBIT 3**

To: Dawn Nuckles  
Company: Knobbe, Martens, Olson & Bear  
Phone:  
Fax: 619-235-0176

From: Dale Olson

U. S. Patent & Trademark Office  
Office of Patent Publication  
Phone: (703) 308-9250 ext. 122  
Fax: (703) 305-4372

Date:

Jan. 11, 2008

Pages including this cover page: 4

Comments:

09/284,421:

Copy of PTO communication  
sent to Applicant electronically on  
10-16-07.



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,421	06/11/1999	JOHN FRANCIS GORDON	NAGACO.076APC	2286
20995	7590	10/16/2007	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			WALLENHORST, MAUREEN	
2040 MAIN STREET			ART UNIT	PAPER NUMBER
FOURTEENTH FLOOR			1743	
IRVINE, CA 92614			NOTIFICATION DATE	DELIVERY MODE
			10/16/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
 cOAPilot@kmob.com



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Application Number : 09/284,421

Applicant : Gordon

Filing Date : 6/11/99

Notification Date : 10/16/07

**NOTICE TO FILE CORRECTED APPLICATION PAPERS*****Notice of Allowance Mailed***

This application has been accorded an Allowance Date and is being prepared for issuance. The application, however, is incomplete for the reasons below.

Applicant is given two months from the mail date of this Notice within which to correct the informalities indicated below. If the informality pertains to the abstract, specification (including claims) or drawings, the informality must be corrected with an amendment in compliance with 37 CFR 1.121 (or, if the application is a reissue application, 37 CFR 1.173). Such an amendment may be filed after payment of the issue fee if limited to correction of informalities noted herein. See Waiver of 37 CFR 1.312 for Documents Required by the Office of Patent Publication, 1280 Off. Gaz. Patent Office 918 (March 23, 2004). In addition, if the informality is not corrected until after payment of the issue fee, for purposes of 35 U.S.C. 154(b)(1)(iv), "all outstanding requirements" will be considered to have been satisfied when the informality has been corrected. A failure to reply will result in the application being ABANDONED. This period for reply is NOT extendable under 37 CFR 1.136(a).

See attachment.

*A copy of this notice MUST be returned with the reply. Please address response to  
"Mail Stop Issue Fee, Commissioner for Patents,  
P.O. Box 1450, Alexandria, VA 22313-1450".*

Dale G. Olson  
Office of Patent Publication  
Phone: 703-308-9250 ext.122

Application No.

09/284,421

Drawings filed

8-6-02

## IDENTIFICATION OF DRAWING DEFICIENCIES

- There is a hole or the image thereof within the illustration. FIG(s) \_\_\_\_\_
- The character of the lines, numbers and letters is poor. FIG(s) \_\_\_\_\_
- The illustration is penetrated or traversed by a solid or broken line that is not intended to be part of the drawing, such as a dark line caused by a flaw in the copying process. FIG(s) \_\_\_\_\_
- An ink stamp or an image obscures part of the illustration. FIG(s) \_\_\_\_\_
- The drawing is marred by black smudges, obliterations, or fax/copier marks. FIG(s) \_\_\_\_\_
- Figure numbers are duplicated or missing. FIG(s) \_\_\_\_\_
- Numbers, letters, or reference characters in the drawing have been crossed out by hand or are illegibly handwritten. FIG(s) 4d
- The drawing's background shows that the original drawing was made on graph paper or other paper with a pattern or decoration. FIG(s) 8
- The FIG. number label is placed in a location that causes the drawing to be read upside down. FIG(s) \_\_\_\_\_
- Data, a reference number, or part of the drawing is truncated or missing. FIG(s) \_\_\_\_\_
- The drawing is continued onto a second page (or more) without proper labeling under 37 CFR 1.84(u)(1). FIG(s) \_\_\_\_\_
- The drawing and/or the FIG. label contain(s) foreign language. FIG(s) \_\_\_\_\_
- Color drawings are present in this application but the following 37 CFR 1.84(a) requirements have not been met\*:
  - Petition filed
  - Petition fee
  - 3 sets of color drawings
  - Color drawing paragraph

\*If color drawings are not elected, then applicant **must respond** so stating. Also, references to color drawings in the specification, if any, must be amended.

COMMENTS: